IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 229 of 1984
WITH
SECOND APPEAL No 230 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAGUBHAI RANCHHODBHAI PATEL

Versus

VITHALBHAI RANCHHODBHAI PATEL

Appearance:
MR BB NAIK for Petitioner
MR NAGIN N GANDHI for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 20/01/2001

COMMON ORAL JUDGEMENT

1. Both these Appeals have arisen from the common judgment, therefore, both the Appeals were heard together

and are being decided by this common judgment.

2. Brief facts giving rise to these Appeals are summarised as under :

Present Appellants - Bhagubhai Ranchhodbhai Patel filed Regular Civil Suits No. 62 of 1979 and Regular Civil Suit No. 63 of 1979 in the Court of learned Civil Judge (JD), Bardoli, for the redemption of the mortgaged property mortgaged by his father to the predecessor of respondents who were defendants in both the suits above.

Regular Civil Suit No.62 of 1979 came to be filed by the plaintiff present appellant stating that the land bearing Survey No. 268 admeasuring 7 acres 10 gunthas in the sim of village Bagumra, Taluka Palsana, District Surat owned by Ranchhodbhai Raghabhai, deceased father of the plaintiff, who died in the year 1952, mortgaged the land admeasuring 3 acres 29 gunthas out of survey No. 268 as stated above, for the amount of Rs. 800 to the deceased Ranchhodbhai Muljibhai Patel, the father of the defendants - respondents herein. Erroneously, in the record of rights, name of defendant No.3 was appearing and hence he was joined as a party in the suit. It was pleaded in the suit that the mortgage deed concerned contained a condition that deceased Ranchhodbhai could redeem the property on payment of the amount at any time. The plaintiff further pleaded that the land bearing Survey No. 268 paiki, 3 acres and 21 gunthas was granted for the amount of Rs.600/- to Khushalbhai Ukabhai in the year 1929. Thus, deceased Ranchhodbhai had handed over the possession of the land to the ancestors of the defendants and thus the defendants were in possession of the said land. The plaintiff further pleaded that he was ready and willing to pay the mortgage amount to the defendants and defendants refused to redeem the mortgage and hence the Suit No. 62 of 1979 came to be filed for the redemption of the suit property and alternatively for the specific performance of the agreement.

3. Defendants No.1 to 3 filed their written statement at Exh.15 contending that the suit was not maintainable and was barred by the principle of res judicata amongst other grounds. It was further contended by the defendants that there were proceedings between defendant No.1 and 2 on one side and father of the plaintiff on the other side under the Bombay Agricultural Debtors Relief Act, 1947 vide Application No. 1699 of 1959 in the court of Civil Judge (JD), Kathor. In that proceedings, the present dispute regarding mortgage was decided by the BADR Court. The BADR Court concluded that

the transaction which is mentioned in the present suit was an out and out sale and not mortgage. The defendants further contended that the said decision of BADR Court was final and conclusive between the party and the plaintiff could not raise same issue in the present suit which was barred by the principle of res judicata. It was further contended by the defendants that Survey No. 268 paiki 3 acres 29 gunthas was thereafter converted to Survey No.268/1 in revenue record and deceased Ranchhodbhai mortgaged the said land for an amount of Rs. 800/- to the father of defendants No. 1 and 2 in Savant Year 1993 is a story concocted by the plaintiff. It was in fact, according to the defendants, an outright sale as concluded by the BADR Court, and in partition during the life time father of the defendants, the property had fallen in the share of defendant No.2 who has become the absolute owner of the said property. It was further contended by the defendants that Survey No. 268/1 admeasuring 3 acres 29 gunthas was purchased by deceased Ranchhodbhai Muljibhai the father of defendants No. 1 and 2 on 10th of July, 1937 vide registered sale deed. It was contended that the suit of the plaintiff failed on this count.

4. While in Regular Civil Suit No. 63 of 1979, plaintiff contended that Survey No. 268 in the sim of village Bagumra, Taluka Palsana, District Surat, admeasuring 7 acres 10 gunthas originally owned by deceased Ranchhodbhai Raghabhai father of the plaintiff who died in 1952 and during his life time deceased Ranchhodbhai out of the land bearing Survey No. 268, paiki 3 acres 29 gunthas were mortgaged for the amount of Rs. 600/- to one Khushalbhai Ukabhai with condition to redeem the mortgaged property on payment of the amount while land admeasuring 3 acres 29 gunthas bearing Survey No. 268 paiki was mortgaged to the father of defendants No. 1 and 2 for the amount of Rs. 800/- for which the Civil Suit No. 62 of 1979 has been filed. In this suit, the plaintiff further contended that the mortgage deed was executed but was not registered. There was an agreement to redeem the property but the original agreement was lost and destroyed in the flood of 1959 but an entry was made in the revenue record to that extent. Plaintiff further pleaded that Khushalbhai Ukabhai died in the year 1957 and the name of Dhaniben Ukabhai sister of deceased Khushalbhai Ukabhai was mutated in the revenue record in the year 1957. The entry in the revenue record further denotes that the said land was sold to the father of the defendant No.1 for the amount of Rs. 4,000/- and thus the defendant No.1 was in possession of the land according to revenue entry No.294.

It is further contended by the plaintiff that he has right to redeem the said property from the defendants and when defendants refused to act according to the terms and conditions of the mortgage deed, he was constrained to file the present Civil Suit No. 63 of 1979.

5. In this suit also, defendants filed their written statement at Exh.10, inter alia, contending that the suit was not maintainable and was barred by the principle of res judicata. The defendants made reference to the earlier proceedings between the father of plaintiff and Kalabhai Ranchhodbhai and Khushalbhai Ukabhai in BADR proceedings. In the said BADR proceedings it was further contended that the said Application bearing No. 1699 of 1970 was decided by Civil Judge (JD), Kathor as BADR Court, in which BADR Court was pleased to conclude that the transaction was of out and out sale and not of the mortgage. It was contended that thus when by a competent court it was decided that the transaction was of sale, the present plaintiff cannot raise the present dispute which is barred by the principle of res judicata.

6. In both the above said suits, the learned Civil Judge (JD), Bardoli framed several issues at Exh. 20 and 21 in the respective sutis.The issue "whether the suit is barred by principle of res judicata" was treated as a preliminary issue in both the suits by the learned Civil Judge (JD). Ultimately, after hearing the parties, learned Civil Judge (JD) came to the conclusion in both the suits that each suit was barred by principle of res judicata and was liable to be dismissed. The order was passed below Exh. 25 in Civil Suit No. 62 of 1979 and below Exh. 15 in Civil Suit No. 63 of 1979.

7. Being dissatisfied and aggrieved, the plaintiff preferred Regular Civil Appeal No. 125 of 1982 in Regular Civil Suit No. 62 of 1979 and Regular Civil Appeal No. 126 of 1982 against the order passed in Regular Civil Suit No. 63 of 1979 in the court of learned Assistant Judge, Surat, and learned Assistant Judge, Surat, after hearing both the parties, was pleased to dismiss both the Appeals of the plaintiff present appellant, vide his common judgment and order dated 3rd May, 1984. Being aggrieved and dissatisfied, the present two Second Appeals No. 229 of 1984 and 230 of 1984 have been filed. Second Appeal No. 229 of 1984 has been filed against the order passed by learned Assistant Judge, Surat in Regular Civil Appeal No. 125 of 1982 while Second Appeal No. 230 of 1984 has been filed by the original plaintiff appellant herein against the order passed in Regular Civil Appeal No. 126 of 1982 passed by

Assistant Judge, Surat, whereby both the above Appeals as aforesaid came to be dismissed.

8. Learned Advocates for the parties were heard.

9. While admitting the Appeals, this Court formulated following 4 issues as substantial questions of law to be decided in these Appeals :

(i) Whether in the facts and circumstances of the case the Judgment of the Debt Adjustment Court under the Bombay Agricultural Debtor's Relief Act that the transaction was not a mortgage but outright sale is without jurisdiction?

(ii) Whether in the facts and circumstances of the case the judgment of the Debt Adjustment Court under the Bombay Agricultural Debtor's Relief Act amounts to res judicata to the present suit not though the same was without jurisdiction?

(iii) Whether the judgment of the Debt Adjustment Court under the Bombay Agricultural Debtors Relief Act, that the transaction was not a mortgage but outright sale was without jurisdiction or not?

(iv) Whether the judgment of the Debt Adjustment Court under the Bombay Agricultural Debtors' Relief Act, amounts to res judicata to the present suit or not though the same was without jurisdiction?

10. Having heard learned advocates for the parties and perusing the record, it clearly appears that the only question which requires to be decided is whether the decision of the BADR Court would operate as res judicata between the parties. It is an admitted fact that for the same transaction, which is alleged in both the Appeals, were the subject matter of proceedings before the BADR Court. It was also admitted that BADR Court was pleased to conclude the transactions in both the Appeals to be of an outright sale and not of the mortgage. Now, therefore, the question arises whether the said decision of the BADR Court would operate as res judicata between the parties.

11. The learned Asst. Judge relied on Explanation VIII of Sec. 11 of the Civil Procedure Code, which was inserted in the Code by amending Act, 1976 and by this provision, it is provided that an issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a

subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised. Learned Asst. Judge also relied on the judgment of this Court in the matter of RAMANBHAI TRIKAMLAL vs. VAGHARI VOGHABHAI OGHABHAI & ANR. reported in 20 GLR 268 and denied the arguments from the plaintiff side that the Court of BADR was a court of limited jurisdiction and its decision could not operate as res judicata.

12. The amended provision i.e. Explanation-VIII to Sec. 11 of the Civil Procedure Code makes it amply clear that decision of the court of limited jurisdiction, competent to decide such issue shall operate as a res judicata between the parties. Further, it is provided that such court of limited jurisdiction may not be competent to try subsequent suit on the same issue between the parties. Though the Court of BADR was a court of limited jurisdiction but was empowered and was vested with the jurisdiction to decide whether the transaction involved in the above said proceedings before it were the transaction of mortgage or the transaction of out and out sale. Having heard the parties, BADR court came to the conclusion that the transaction involved in the proceedings were of out and out sale and not of the mortgage. Undoubtedly, the decision of the BADR court would operate as res judicata between the parties. However, plaintiff has raised the same dispute in both the above mentioned suits but both the courts below rightly held that since the question was decided as res judicata between the parties by court of competent jurisdiction, though with the limited jurisdiction, then the same cannot be re-agitated by virtue of Explanation VIII of Sec. 11 of the Code of Civil Procedure. In Ramanbhai Trikamlal vs. Vaghari Voghabhai Orghabhai and Anr., this Court was pleased to rule that the Award of the BADR Court was a command issued by the Civil Court and hence it is an `order'of a Civil Court. Even according to ordinary meaning of the word `Order', the Court was pleased to observe that so far as the Limitation Act 1908 and the Limitation Act 1963, were concerned, it must be held that an award passed by a Debt Adjustment Court is an order of a Civil Court. Thus, the view of this court in the above said decision is supporting the view taken by both the courts below. The learned Assistant Judge also found support from the principle laid down by the Supreme Court in the case of LAL CHAND vs. RADHA KISHAN, reported in AIR 1977 SC 789 and SMT. RAJ LAXMI DOSI vs. BANAMALI SEN, reported in AIR 1953 SC 33, wherein the Apex Court was pleased to

observe that the Tribunal has exclusive jurisdiction and, therefore, any question raised in subsequent proceeding would be barred by the principle of res judicata. After considering the issue from all the angles, courts below rightly came to the conclusion that the Bombay Agricultural Debt Relief Act was a statute which provided judicial machinery for deciding the disputes arising under the statute and the decision of the BADR Court therefore must be considered to be the order of the Civil Court and conclusive and final between the parties. Parties therefore must be prevented by the principle of res judicata to re-agitate subsequently the same dispute as might have been decided by the Debt Adjustment Court.

13. In this view of the matter, I do not find any reason to interfere with the findings of the courts below. The substantial questions of law as formulated are replied accordingly. No other substantial question of law has arisen in the matter.

14. In view of the above discussion, both the Second Appeals bearing No. 229 of 1984 and 230 of 1984 are hereby dismissed with no order as to costs.

(J.R. Vora,J.)

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